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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

REPLY OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES TO PETITIONS FOR CLARIFICATION AND RECONSIDERATION

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October 31, 1996

No. of Copies rec'd 0+4
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SUMMARY

The many petitions for clarification and reconsideration filed in this proceeding fall into two basic camps. The petitions filed by new entrants, interexchange companies, and cable interests seek refinements of the basic policies adopted by the Commission in its First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98 and 95-85, released August 8, 1996 ("Interconnection Order"). On the other hand, the petitions filed by states and the few incumbent local exchange companies ("ILECs") that have decided to raise their issues on reconsideration rather than before the Eighth Circuit (Iowa Utilities Board v. FCC, No. 96-3321 and consolidated cases) basically ask the Commission to abandon its commitment to local competition.

The Commission should not be diverted from its current course. While the Eighth Circuit has entered a stay of certain parts of the Commission's current rules, the Court will hear argument on the merits of that case during the week of January 13, 1997, and will probably issue a decision in March or April of next year. The Court will then either affirm the Interconnection Order and dissolve its stay, or else set some elements of the Interconnection Order aside. The first event would not interfere with any Commission action on the present petitions, and the second event would only affect the Commission's ability to

dispose of the present petitions if the Eighth Circuit's mandate were to issue pending Supreme Court review. Given the importance of the issues involved in the Interconnection Order, ALTS does not believe the Supreme Court would permit the issuance of a mandate before it takes up the matter itself. Accordingly, ALTS respectfully asks that the Commission stay its course, and grant the petitions for reconsideration and clarifications in the manner discussed below.

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Pursuant to Section 1.429 of the Commission's rules, the Association for Local Telecommunications Services ("ALTS") hereby replies to various petitions for clarification and reconsideration of the Commission's First Report and Order in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 ("Interconnection Order") released August 8, 1996, in the above proceeding (FCC 96-325).[1]

[1] ALTS is the national trade association for over thirty facilities-based competitive providers of access and local exchange services. ALTS submitted both initial and reply comments in this proceeding, and has filed a petition for clarification and reconsideration.

I. THE COMMISSION SHOULD CLARIFY ASPECTS OF THE COST STANDARDS AND RATE STRUCTURE APPLICABLE TO INTERCONNECTION AND UNBUNDLED NETWORK ELEMENTS.

A. The Commission Needs to Assure That ILECs Cannot Charge Unsupported and Anticompetitive NRCs.

The principal cost focus of the Interconnection Order was on the recurring costs incurred by interconnectors, not the non-recurring costs. This is understandable, since repetitive events lend themselves better to principled analysis than do the one-time transactional events that are intended to be captured by non-recurring costs.

Unfortunately, the ILECs have responded to the absence of detailed rules for non-recurring costs in the Interconnection Order by proposing NRCs for interconnection, network elements and collocation (referred to as "network element NRCs" hereafter) that are totally unsupported and plainly anticompetitive. ALTS commented on this problem in its petition for clarification and reconsideration, and supports AT&T's discussion of this problem in its Petition for Reconsideration (AT&T at 8-19).

1. Calculations of Demand for Network Element NRCs Must Be Allocated Across All Demand for Network Elements -- Including ILEC Demand.

AT&T is correct in urging the Commission to clarify that "non-recurring costs that reflect any differences between an efficient single provider network and one designed, as the Act requires, to serve multiple carriers must be treated like all other costs of the 'reconstructed network' and recovered in an efficient, competitively neutral, and nondiscriminatory manner;"

emphasis in original (AT&T at 11).

The statutory mandate here is clear. Congress required in the Telecommunications Act of 1996 that interconnectors be allowed to purchase network elements from ILECs on the same basis that network elements are provided to the ILECs themselves. It necessarily follows that if certain investments and costs must be incurred to provision those elements on a multi-carrier basis, those costs must be allocated to all entities that use network elements, whether expressly or implicitly, including the incumbent itself. It would be fundamentally inconsistent with the goals underlying Section 251(c)(3) to permit an ILEC or its affiliates to obtain network elements under an economic model that differs from the manner in which interconnectors obtain such elements.

In addition to violating the 1996 Act, asymmetric treatment of network element NRCs for ILECs as opposed to CLECs would create institutional incentives for the ILECs to shift as many network costs as they can, legitimate or otherwise, to network element NRCs. Requiring that the ILECs' own implicit use of network elements be reflected in their NRC calculations is a safeguard against anticompetitive manipulation of these charges. Accordingly, ALTS supports AT&T's request for clarification that: "in calculating unit charges attributable to a particular requesting carrier, the incumbent LEC must spread the relevant forward-looking costs across <u>all</u> demand -- <u>i.e</u>., across all lines, including the lines still served by the incumbent;" (emphasis in original; AT&T Petition at 13).

2. Network Element NRCs Should Only Reflect Forward-Looking Transactional Costs.

AT&T is also correct in asking the Commission to clarify that network element NRCs must incorporate only the transactional forward-looking costs of an incumbent using "most efficient technology;" (AT&T Petition at 16). To state the issue bluntly, most ILECs have chosen to retain computer systems that are notoriously inflexible and undocumented, and which do not permit even the modest simple modifications needed to generate automated transactions for network element NRCs. Perhaps the decision not to implement modern efficient information technology made financial sense to the ILECs under a monopoly structure, given customers' lack of alternatives. But whatever the reason for the ILECs' historical decision not to use up-to-date systems, that decision cannot justify presenting CLECs with 1996 network NRC costs based either on the manual processing of requests, or the costs of upgrading both operational and information systems to efficient technologies which the ILECs should have implemented years ago.

3. The Commission Should Create a Rebuttable Presumption that NRC Costs Based on Electronic or Software Interfaces Should Not Exceed $5.

AT&T is correct the Commission should establish a proxy charge of $5.00 for any network element NRC involving a transaction by electronic or software interfaces (AT&T Petition at 19). The "supercedure" charge of $4.15 adopted by the California PUC for Pacific Bell transactions involving Pacific Bell customers moving to a reseller implements a safeguard necessary to redress a similar policy concern, as does NYNEX's incremental cost study involving software-only vertical features transactions. The $5.00 provides a "safe harbor" protecting CLECs, while still permitting ILECs to demonstrate that efficiently-run wholesalers of network services actually do require higher transaction prices.

4. **Existing Tariffed NRCs Should <u>Cap Any Network Element NRCs</u>.**

Finally, AT&T is clearly correct that existing tariffed NRC charges for end users or carriers should serve as caps for any network element NRCs (AT&T at 20). As ALTS pointed out in its initial comments, interconnectors should be entitled to request any of an ILEC's existing NRCs, or, if an ILEC lacks a particular tariffed NRC, request the lowest tariffed NRC from any other ILEC, subject to a showing by the original ILEC that such an amount is not appropriate.

B. **The Commission Should Clarify Its <u>Rules Concerning Loop Deaveraging</u>.**

ALTS supports the petitions of MFS and AT&T concerning loop deaveraging, and opposes Sprint and Wisconsin on this issue. MFS requests clarification on particular details of loop deaveraging: (1) the Commission's requirement of at least three zones per state should be a <u>state-wide</u> requirement, not an individual study area requirement; (2) specific loop costs which do not vary with geography or density (such as NRC costs) need not be deaveraged; and (3) the Commission's loop proxies shown on Appendix D of its Interconnection Order serve as a state-wide ceiling, not a study-area specific ceiling (MFS Petition at 20-21). Each clarification should be granted.

AT&T raises a similar meritorious request for clarification on loop unbundling: deaveraged loop prices should solely reflect zone density differences, not the identity of an ILEC or its demand projections (AT&T Petition at 26-28). ALTS supports AT&T's request.

The portions of Sprint and Wisconsin's petitions which address loop deaveraging are plainly unfounded. Sprint endorses geographic deaveraging "enthusiastically" (Sprint Petition at 7), but it: "believes that the deaveraging of proxy rates for loops is fraught with practical difficulties and could unnecessarily divert resources away from developing cost-based unbundled loop rates" (id.). To state Sprint's "problem" plainly: "An ILEC whose service area is more rural may have higher costs, even in its most dense areas, than an ILEC who serves the large urban areas of a state" (id. at 8).

What Sprint really seeks here, of course, is to avoid having the loop costs of its exchange companies limited by the loop costs of the most efficient loop provider even where the involved loops have the same underlying cost characteristics. But this is what the Telecommunications Act is all about. If Sprint is unable to operate loop facilities of a certain density at the same costs that would be incurred by an efficient provider operating such loops, it is not the obligation of new entrants to make up the difference for Sprint.

The request of the Public Service Commission of Wisconsin for a waiver process encompassing the deaveraging obligation is also misdirected (Wis. Petition at 7-8). It argues that "there are too many 'unknown unknowns' at this time to be certain what factors are relevant to the deaveraged rates" (id.). But neither Wisconsin nor any other state denied the fact that density is a significant cost driver for unbundled loop costs in their many pages of comments. ALTS understands that Wisconsin has many independent companies, and that the implementation of this aspect of the Interconnection Order creates institutional issues for Wisconsin. The fact remains that the creation of a waiver authority would simply permit some states -- not necessarily Wisconsin -- to duck the unpleasant but unquestionable economic truth about the real costs of deaveraged loops.

The Commission directed states to conduct generic cost proceedings rather than establishing loop rates in arbitration proceedings in large part to give all parties with an interest in establishing deaveraged, stateside loop rates an opportunity to participate. Clearly, the generic proceeding is the appropriate place to consider and reflect the concerns of all parties -- new and incumbent -- in selecting a model that reflects on average the forward looking cost of serving every region of each state.

C. **The Commission Should Require Each TELRIC Cost <u>Study To Implement Certain Concrete Principles</u>.**

MCI proposes in its petition that the Commission adopt the Hatfield Model as the appropriate implementation of the Commission's TELRIC cost standard (MCI Petition at 2-6). ALTS agrees with MCI that the Commission needs to prevent blatantly mistaken TELRIC implementations, such as GTE's recent claims in a federal tariff filing that historical costs comply with TELRIC (GTE Operating Companies Tariff Trans. No. 1055, D&J-Rate Structure). However, ALTS believes it is premature now to select a specific methodology as the only appropriate implementation of TELRIC given that the Commission is committed to revisiting the fundamentals of TELRIC in a new proceeding early next year (<u>Interconnection Order</u> at ¶ 623).

ALTS believes the Commission need not adopt a particular TELRIC implementation at the present time in order to deter the filing of patently erroneous TELRIC "studies." In the Commission's <u>Number Portability</u> decision (<u>Telephone Number Portability</u>, CC Docket No. 95-116, released July 2, 1996), the Commission declined to select a particular technology for full number portability, and instead adopted criteria that any full number portability approach has to accommodate.

ALTS urges the Commission to adopt a similar approach here by requiring the senior person with operational authority for the preparation of cost studies at an entity submitting a TELRIC study to personally certify compliance with each regulation set forth at §§ 51.501-51.515.

D. CLECs Are Not Obligated to Provide Transmission to ISPs at the Same Price They Obtain it from ILECs.

ITAA requests that CLECs be obligated to provide transmission to non-ISPs at the same prices provided to a CLECs' own ISP operations (ITAA Petition at 2-4). According to ITAA (ITAA Petition at 3): "[as] the Commission has observed, allowing a carrier to provide underlying transmission capacity to its own information service affiliate at 'cost,' while making the identical capacity available to non-affiliated information service providers at substantially higher price, 'is a classic version of the price squeeze.'" What ITAA disregards here, of course, is that both "price squeezes," as well as the dominant carriers the Commission was discussing in the passage quoted above, each involve monopoly power. No such monopoly power exists in the case of CLECs.

Thus, what ITAA actually seeks here has nothing to do with good policy, but rather with rewriting the Telecommunications Act of 1996. The language of Section 251 is expressly limited to requesting telecommunications carriers, which does not include ISPs unless they independently qualify (new Section 153(44) of Title 47). Accordingly, the Commission cannot grant the relief sought by ITAA.

II. TRANSPORT AND TERMINATION OF TRAFFIC

A. The Statutory Standard for Transport and Termination of Traffic Does Not Include Reasonable Profit.

ALTS agrees with TCG and NCTA that the statutory standard for transport and termination of traffic under the 1996 Act is not identical to the cost standard for unbundled network elements and collocation, and thus cannot equal the TELRIC standard adopted to implement Section 251(c)(3) and Section 251(c)(5). Furthermore, both TCG and NCTA are correct that sound policy considerations underscore Congress' decision to impose distinct costs standards for network elements as opposed to transport and termination.

1. The Telecommunications Act of 1996 Permits ILECs to Recover Only their Incremental Costs for Transport and Termination, and Precludes Recovery Of the Overhead Costs in TELRIC.

TCG and NCTA are correct in noting the significant difference in statutory language concerning cost standards between Section 252(d)(1), dealing with transport and termination of traffic, and the unbundled network element and collocation standard in Section 251(c). Section 252(d)(2)(ii) requires only a "reasonable approximation of additional costs of terminating such calls," while Section 251(c) permits inclusion of a reasonable profit, which TELRIC accomplishes via an allocation of overhead costs. Because the "additional costs" standard of Section 252(d)(2) necessarily excludes some or all of the "reasonable profit" allowed under Section 251(c), it should follow that the TELRIC standard adopted to implement Section 251(c) cannot be applied unchanged to transport and termination.

2. **Sound Policy Requires that ILEC Prices for Transport and Termination <u>Exclude Overhead Allocations</u>.**

There are also sound policy reasons why the Commission should grant TCG and NCTA's petitions on this issue. First, termination and transport is the ultimate bottleneck for new entrants. If CLECs cannot connect their potential customers to end users served by an incumbent, they have no way to enter a switched market. Accordingly, the Commission needs to minimize the risk that unduly high ILEC rates for transport and termination of traffic could create barriers to market entry.

Second, the volume of local traffic exchanged under such arrangements (since interexchange traffic will flow under different legal arrangements even where it uses the same facilities) will not be immediately affected by market entry. Thus, the facilities constructed by a new entrant effectively relieve the incumbent of a portion of its facilities obligation, even though the "sender pays" aspect of local rate structures insures that the company originating more inter-LEC local traffic also retains most of its local revenue. According, there is no unfairness in restricting the cost of transport and termination to only the incremental costs, i.e., to TELRIC costs less any allocation of overheads.

B. CLECs Are Entitled to Tandem Compensation When CLEC Switches Perform Tandem Functions or Serve Comparable Areas.

MFS is correct that the Commission should clarify that CLEC switches are entitled to tandem compensation if the switch: "either serves a geographic area comparable to that of the LEC tandem, or its network performs functions similar to those performed by a tandem" (MFS Petition at 26). With the availability of unbundled network elements, a CLEC can offer service in a geographic area comparable to the area served by an ILEC's tandem without necessarily owning loops and other facilities throughout the same area. US WEST's contentions in arbitration proceedings that CLEC tandems must parallel ILEC tandem service areas to qualify for symmetric tandem compensation pursuant to § 51.711(a)(3) is plainly mistaken and unfair, and should be corrected immediately.

Similarly, Sprint argues in its petition that the Commission should: "modify § 51.711(a) to provide that in cases where symmetrical rates are employed, and the CLEC switch serves the same geographic area as an ILEC's tandem switch, the CLEC is only entitled to compensation for local switching and a portion of the facility interconnecting its switch with that of the ILEC" (Sprint Petition at 13). The thrust of Sprint's complaint is that even though a portion of a CLEC's network between the CLEC switch and end user premises may be traffic sensitive, inasmuch as the ILECs are forced to treat such plant as non-traffic sensitive, the same treatment has to be imposed on the CLECs (id.

at 12-13; see also LECC at 14). But any defects in the current access charge regime for ILECs is hardly an excuse for extending that illogic to the CLEC networks. Sprint's argument should be rejected for these reasons, and for those set forth in Cox's petition: "requiring symmetrical compensation will ensure that the Commission's interconnection rules are neutral as to technology, create no efficiency disincentives and minimize network costs" (Cox Petition at 7).

C. Bill and Keep Can Be Based on Projected as Well as Historical Traffic Patterns.

Comcast/Vanguard are correct that the states: "should be encouraged to consider the altered economic incentives created by the 1996 Act to justify a bill and keep presumption based on projected traffic and demand patterns between LECs and CMRS providers on a going forward basis" (Comcast/Vanguard at 17-18). A similar perspective is offer by NCTA: "the absence of true number portability will inhibit customers from giving CLECs their inbound traffic and thus retard the growth of balanced traffic. The Commission has already recognized the essential role that full number portability plays in the development of local competition. Consistent with that finding, it should permit States to maintain bill and keep until at least one year after ILEC implementation of full number portability in accordance with the Commission's rules" (NCTA Petition at 3).

D. CLECS Should Have the Discretion to <u>Rate Inter-LEC Traffic as Local</u>.

NCTA correctly observes in its petition that because new entrants need to distinguish themselves through different local calling areas than those used by incumbents, as well as through new technologies, there is no logic in requiring new entrants to use the same local calling areas as the incumbents (NCTA Petition at 24-25). NCTA concludes that: "The Commission should clarify that local transport and termination charges apply within any area in which ILECs offer local, expanded local, extended area service, or optional expanded local calling plans" (<u>id</u>.). ALTS supports this proposal.

Cox raises a related point by requesting that the Commission clarify its rules: "to permit carriers to associate NXX codes with rating points other than the physical locations of their switches or the point of interconnection. This approach will permit CLECs and CMRS providers to insure that calls to and from their customers are not accidentally subjected to toll charges by virtue of switch locations" (Cox Petition at 10). ALTS agrees.

E. ILECs Have an Immediate Obligation to <u>Provide Interim Transport and Termination</u>.

LECC proposes that the Commission effectively gut its requirement of "immediate" provisioning of interim transport and termination as set forth in § 51.715(a)(LECC Petition at 35). According to LECC, "non-rate" issues such as "the appropriate handling of 911/E911 call" should not be subject to this requirement.

As the Commission can well appreciate, there are serious issues involved in commencing the exchange of switched traffic, even on an interim basis, without satisfactory arrangements for the handling of E911/911 calls. Unless § 51.715(a) continues to apply to such "non-rate" issues, the requirement of immediate interim transport and termination will be seriously undercut.

III. THE COMMISSION SHOULD ADDRESS CERTAIN ISSUES INVOLVING UNBUNDLED NETWORK ELEMENTS.

A. Cross-Connects Should Be Treated as an Unbundled Network Element.

MFS notes the Commission failed to include cross-connect facilities on its list of unbundled network elements (Interconnection Order at ¶ 386), even though the portion of the Interconnection Order discussing collocation clearly states that incumbent LECs must provide cross-connects between an unbundled loop and a requesting carrier's collocated equipment pursuant to reasonable rates, terms and conditions under Sections 252(d)(1) and 251(c)(3)(MFS Petition at 8). ALTS agrees with MFS, and asks that the Commission grant MFS's petition on this point.

B. There Is No Reason to Exclude Proprietary Network Elements from Unbundling Requirements.

LECC contends the Commission erred in giving CLECs access to proprietary network elements where the requesting carrier cannot "offer the proposed telecommunications service through the use of other, nonproprietary elements in the incumbent LEC's network"

(LECC Petition at 27, quoting the Interconnection Order at ¶ 283). According to LECC: "overriding such proprietary interests in such circumstances may unlawfully infringe upon the incumbent's LECs' intellectual property rights or obligations" (id.). But LECC cites no authority for this position, and ALTS respectfully submits that none exists. Once a piece of property is dedicated to public use by its owner -- whether it is a humble parcel of land or a proprietary software system -- the sovereign has plenary power to regulate the use of that property in the public interest subject only to Fifth Amendment takings limitations. LECC's claim lacks any legal or policy basis, and should be rejected.

C. **Further Loop Unbundling Should Be Permitted.**

MFS and MCI argue in their petitions that the Commission should take the initiative on sub-loop unbundling, and not just refer this issue to the states (MFS Petition at 9-10; MCI Petition at 16-19). MFS asks the Commission to reopen the record, if necessary, to confirm the necessity of sub-loop unbundling (MFS Petition at 9), and MCI points out that the only technical impediment found by the Commission was that "proponents of subloop unbundling had failed to adequately respond to the incumbent LECs' allegations that subloop unbundling raises network reliability concerns" (MCI Petition at 16). As MCI correctly points out, "[c]ross-connecting distribution pairs to a new entrant's feeder at a [feeder/distribution interface] is no different from cross-connecting distribution pairs to incumbent

LEC feeder" (MCI Petition at 16).

ALTS suggests there really are two points in MFS's comment. First, the Commission should clarify that an ILEC must provide as part of the unbundled loop network element all the necessary cross-connections between its NID on the customer premises to and including the "jumper wires" on the MDF or IDF in its central office in order to provide a complete circuit between the customer premises and the central office. Second, the Commission should define a new network element to include the intra-office cabling from the office side of the MDF or IDF to the CLEC's point of presence. This new network element might better be called "intra-office cabling," not "cross-connect," and should have several options. CLECs can negotiate to provide these facilities themselves or to arrange special construction with one-time charges as a negotiating item. Or, the incumbent can provide the same facilities with or without "point of termination" ("POT") bays and with or without testing facilities. The CLEC should have the option of choosing either alternative and should not be required to accept unwanted test facilities or POT bays.

The Commission should reconsider its finding as to sub-loop unbundling at the feeder/distribution interface, and reopen the record to consider other instances of sub-loop unbundling.

D. The Commission's Definition of Unbundled Loops Should Be Clarified.

MFS requests in its Petition that the Commission clarify that unbundled loops include: "both a termination on the main distribution frame (or equivalent) and access to the NID (that is, it should terminate on the subscriber's side of the NID)" (MFS Petition at 5). Furthermore, MFS asks that the Commission insure that conditioning charges not be double charged to CLECs in situations where the underlying TELRIC unbundled loop costs already reflect a loop technology that automatically provides loop conditioning (id. at 5-6). For example, the forward looking design for loops will already support ISDN, ADSL and HDSL on the unloaded, copper-based portion of the loop plant. ILECs in several state arbitration proceedings have confirmed this design remains appropriate for loops shorter than 18 kilofeet. In these cases, no conditioning costs are appropriate. Beyond 18 kilofeet, other technologies are required that may utilize unique plug-ins for digital loop carrier or require sub-loop unbundling. ALTS agrees with MFS on these points.

ALTS also asks that the Commission reject Sprint's request that unbundled loops be limited to: "an electrical or optical transmission path," and not include a physical facility (Sprint Petition at 2-4). The Commission has already explained the defects in this contention (Interconnection Order at ¶ 385):

> "Giving competing providers exclusive control over network facilities dedicated to particular end users provides such carriers the maximum flexibility to offer new services to such end users. In contrast, a definition of a loop element

that allows simultaneous access to the loop facility would preclude the provision of certain services in favor of others." (Emphasis supplied.)

E. LECC's Attacks on Various Unbundling Requirements Are Each Without Merit.

LECC asserts that DA, operator services ("DAS/OS"), and the SMS/800 database do not qualify as unbundled network elements (id. at 27-28; 32-33), and that DAS/OS should instead "be offered under the resale standard" (id.). However, in the resale portion of its petition, LECC turns around and asserts that branding and routing -- functions essential to operator services -- are "technically infeasible" (id. at 20-21).

LECC's "heads I win, tails you lose" position should be emphatically rejected by the Commission. LECC claims that DAS/OS are not used in the "provision of a telecommunications service": "Congress regarded DAS/OS as services associated with dialing parity, rather than as network elements subject to the unbundling and pricing requirements of Section 251(c);" (id. at 28). But the Interconnection Order clearly rejected this reasoning (at ¶ 261):

> "The only limitation that the statute imposes on the definition of a network element is that it must be 'used in the provision of a telecommunication service.' Incumbent LECs provide telecommunications service not only through network facilities that serve as the basis for a particular service, or that accomplish physical deliver, but also through information (such a billing information) that enables incumbents to offer services on a commercial basis to consumers. Our interpretation of the term 'provision' finds support in the definition of the term ' network element'. That definition provides that the type of information that may constitute a feature or function includes information 'used in the transmission, routing or other provision of a telecommunications service.' Since